

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA ) No. EP-12-CR-2106-DB  
 ) EP-13-CR-370-DB  
 )  
vs. ) El Paso, Texas  
 )  
MARCO ANTONIO DELGADO ) August 8, 2013

MENTAL COMPETENCY HEARING

A P P E A R A N C E S:

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computer-aided transcription.

1 THE COURT: The clerk will call the cases.

2 THE CLERK: EP-12-CR-2106 and EP-13-CR-370, Marco  
3 Antonio Delgado.

4 MS. KANOF: Debra Kanof and Anna Arreola for the  
5 United States, Your Honor.

6 MR. VELARDE: Ray Velarde, Your Honor, and Richard  
7 Esper on behalf of Marco Delgado on both cases.

8 THE COURT: Why don't we get the Defendant up there  
9 with you.

10 MR. VELARDE: Okay.

11 THE COURT: You are Marco Antonio Delgado?

12 THE DEFENDANT: Correct.

13 THE COURT: Okay. Counsel, you've been provided with  
14 a copy of Dr. Briones's psychiatric evaluation. He has  
15 determined (Reading) Even though Mr. Delgado is suffering from  
16 an anxiety disorder, he has a rational as well as factual  
17 understanding of the proceedings against him and has sufficient  
18 ability to consult with his attorney and to assist in his own  
19 defense with a reasonable degree of rational understanding.

20 Quite frankly, that was my feeling all along.

21 Any reason not to concur with Dr. Briones's  
22 evaluation?

23 MR. VELARDE: None, Your Honor.

24 MS. KANOF: I have marked Government's Exhibit 1 in  
25 Cause Number EP-13-CR-370 and Government's Exhibit 1 in

1 EP-12-CR-2106. I've marked the psychiatric evaluation for  
2 entry into the record, Your Honor. We move the Government's  
3 exhibit be admitted.

4 THE COURT: Any objection?

5 MR. ESPER: No objection.

6 THE COURT: The psychiatrist evaluation will be  
7 admitted.

8 MR. ESPER: Your Honor, in connection with that report  
9 there is a notation by Dr. Briones about a neurological exam,  
10 which I think should be performed just to make sure that there  
11 are no repercussions.

12 THE COURT: No. I'm not going to order it. If you  
13 want to pay for it yourselves, maybe the marshals may. I may  
14 order the marshals to. I'm not going to order any more  
15 evaluations.

16 Counsel, there's no question in my mind this man is  
17 competent. He was competent from the very beginning. He's  
18 more competent than 99 percent of the individuals that come in  
19 here before me. I'm not going to go through any other  
20 evaluation. This case is going to be set for trial. Both  
21 cases are going to be set for trial.

22 I told you earlier today that I was considering a date  
23 of next month. I gave you a date of October the 30th. I  
24 understand --

25 MS. KANOF: October 30th?

1 MR. VELARDE: No. September the 30th?

2 THE COURT: September 30th.

3 Now, you-all had requested something. I told you we  
4 would discuss it at this time.

5 MS. KANOF: Yes, Your Honor. The -- we discussed the  
6 setting of the case looking at each other's calendars and came  
7 up with a date of October 21st.

8 Mr. Velarde and Mr. Esper are in trial in another  
9 court on a fairly complex public corruption two-Defendant case  
10 that begins September 9th, and I don't know how long that case  
11 is going to take, but I know it's fairly significant. I'm  
12 familiar with the evidence. There's a lot of evidence.

13 And I am available anytime except the first week of  
14 November. The week of November 3rd I'll be on temporary duty  
15 with the Department in Washington, D.C., for a week, so that's  
16 how we came to the October 21st date.

17 We also checked on availability of witnesses because  
18 we have witnesses in foreign countries.

19 THE COURT: On the first -- this is the first one?  
20 The first Indictment?

21 MS. KANOF: Yes, this is the EP-12 case.

22 THE COURT: The money laundering.

23 MS. KANOF: The money laundering Indictment. Yes,  
24 sir.

25 THE COURT: Counsel?

1 MR. ESPER: October 21st is fine with us, Your Honor.

2 THE COURT: I want you to request it on the record. I  
3 don't want any problem with a speedy trial motion later on.

4 MR. ESPER: I'm requesting October 21st, Your Honor.

5 MR. VELARDE: And I join in that request.

6 THE COURT: On?

7 MR. VELARDE: October 21st.

8 THE COURT: Yeah, but that's on 12-CR-2106, right?

9 MR. ESPER: Right.

10 THE COURT: What about the other one?

11 MS. KANOF: We hadn't discussed another date,  
12 Your Honor, but anytime after the first week of November  
13 because again I'm going to be --

14 THE COURT: Let me asking something. How long do you  
15 anticipate it will take to try the first -- the first case?

16 MS. KANOF: Three days.

17 THE COURT: Three days.

18 MS. KANOF: Not more than a week. I don't know what  
19 the Defense has to offer, but based on the evidence as I've  
20 reviewed it, of course, the Court knows I'm new to the case,  
21 but I have thoroughly reviewed the file and I don't see more  
22 than a week at the very most.

23 THE COURT: At the most.

24 MS. KANOF: Because there's some complex forfeiture  
25 issues if we had to try them, we'd have to try the forfeiture

1 if he's convicted to the jury as well, so as much a week.

2 THE COURT: Okay. How long will the second one take?

3 MS. KANOF: That one's a little longer. That one has  
4 some more complex issues and really probably not more than a  
5 week, either seven days at the most.

6 THE COURT: Okay. Give me a date in November, Ruben.  
7 We'll try that one in November.

8 Just for the record, October 21st is set for the trial  
9 date in Cause Number EP-12-CR-2106.

10 In Cause Number EP-13-CR-370 --

11 THE CLERK: November the 18th.

12 THE COURT: November the 18th. Okay. The usual time  
13 of 9:00 on both.

14 I asked you to come and put on the record any offers  
15 that you may have in regards to both cases.

16 MS. KANOF: Yes, Your Honor. After an evaluation of  
17 the case, I discussed with my supervisors in San Antonio, an  
18 offer, and based on the fact that the Defendant, I think it's  
19 pretty generous offer, and based on the fact that the Defendant  
20 faces 20 years on each Indictment which can be stacked, the  
21 Government made an offer to Defense Counsel yesterday of nine  
22 years on each Indictment to run concurrent on an 11(C)(1)(c).  
23 And that's -- and it's below the guidelines as well, but of  
24 course, saving the time and money the Government is important.

25 THE COURT: Is that your understanding, Counsel?

1 MR. VELARDE: Your Honor, we were advised of this  
2 yesterday and we broached the subject with Mr. Delgado earlier  
3 today. We would like to continue our visit with him regarding  
4 --

5 THE COURT: I understand. I'm not going to make  
6 you -- I don't need a commitment from you right now.

7 MR. VELARDE: Yes, sir.

8 THE COURT: But I do want to set a time limit.

9 MS. KANOF: Oh, we did. We actually negotiated an  
10 *Ellis* deadline as well, Your Honor, but that was before we knew  
11 the actual trial date, but assuming we were going to trial on  
12 the 21st, our *Ellis* deadline was September 15th, correct?

13 MR. VELARDE: Correct.

14 MS. KANOF: September 15th.

15 MR. ESPER: Or 16th. The 15th is a Sunday.

16 MS. KANOF: Oh, okay. So the 13th.

17 THE COURT: Of what?

18 MS. KANOF: September the 13th, which is a Friday.

19 THE COURT: September the 15th?

20 MS. KANOF: The 13th, which is a Friday.

21 THE COURT: 13th.

22 MS. KANOF: The 16th is a Monday.

23 MR. VELARDE: Can we make it on Monday the 16th?

24 MS. KANOF: Okay. Monday, September the 16th, we're  
25 in agreement, Your Honor, as the *Ellis* deadline.

1 THE COURT: *16 de septiembre* it is.

2 MS. KANOF: *Muy bien.*

3 THE COURT: If he doesn't accept it, I --

4 You'll leave it open until then?

5 MS. KANOF: I will, Your Honor.

6 THE COURT: Okay.

7 MS. KANOF: Yes.

8 THE COURT: Anything else we need now, Counsel?

9 MR. ESPER: Nothing more, Your Honor.

10 THE COURT: Mr. Velarde --

11 MR. VELARDE: Mr. Delgado, Your Honor, is --

12 THE COURT: -- you looked perplexed?

13 MR. VELARDE: Well, Mr. Delgado, Your Honor, is  
14 self-insured. We have the ability to pay for the neurological  
15 exam and we're going to make arrangements through the family to  
16 obtain the neurological exam.

17 All I'm asking of the Court is to please assist us in  
18 facilitating that.

19 THE COURT: Well, file your motion.

20 MR. VELARDE: Thank you very much.

21 MS. KANOF: The Government, by the way, has no  
22 objection, Your Honor, because the Government is always  
23 thinking based on the recommendation of Dr. Briones of a 2255,  
24 so in order to save Steve Garcia any work, we are -- concur  
25 that they pay for a neurological exam.



1 THE COURT: Okay. File your motion and I'll take it  
2 up with the marshals.

3 MR. VELARDE: Thank you very much.

4 MR. ESPER: Your Honor, may I approach sidebar with  
5 your clerk on another matter?

6 THE COURT: Yes.

7 You-all may be excused.

8 MS. KANOF: Thank you, Your Honor.

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14 CERTIFICATION

15  
16 I certify that the foregoing is a correct transcript from  
17 the record of proceedings in the above-entitled matter. I  
18 further certify that the transcript fees and format comply with  
19 those prescribed by the Court and the Judicial Conference of  
20 the United States.

21  
22 Date: December 6, 2017

23 /s/ Maria del Socorro Briggs

24 Maria del Socorro Briggs  
25